

REMARKS

I. Prosecution History.

In response to a second restriction requirement (Paper No. 10 dated March 20, 2003, claim 58 was elected with traverse. In a telephone conversation between the examiner and the undersigned agent on May 7, 2003, the examiner notified the undersigned agent of the allowance of claim 58. The undersigned agent discussed with the examiner that claims 32-56 should properly be issued with claim 58 and faxed an informal amendment to the examiner on May 15, 2003. This informal amendment does not appear to have been considered by the Patent Office.

Claims 1-31 and 57 are canceled and claims 32, 41, and 49 have been amended herein.

II. Explanation of amendments.

The undersigned agent wishes to thank the Examiner for the telephone discussion of May 7, 2003 and the subsequent Office Action dated May 28, 2003 relating to the allowance of claim 58. As discussed in the telephone discussion and related in this and the informal amendment, claims 32, 41, and 49 are related to claim 58 as a subcombination and combination and may properly be made dependant on claim 58. Making restriction final between these claims and claim 58 will cause future problems for both the Patent Office and the applicant because the effect of insisting on restriction is that the Patent Office must admit that claims 32-56 are patentable over claim 58, and vice versa. M.P.E.P. § 802.01 states that the distinctness required for restriction means that the subjects, including "combination and part (subcombination) thereof ... ARE PATENTABLE (novel and unobvious) OVER EACH OTHER" (emphasis with capital letters in original). (See also M.P.E.P. § 808.02, which states that where "related inventions are not patentably distinct as claimed, restriction ... is never proper.") Each of claims 32-56 and 58 includes similar elements, and therefore such admissions would appear to be improper.

In addition, where restriction is required, a double patenting rejection may not later be made by the Patent Office, and therefore "it is imperative the requirement should never be made where related inventions as claimed are not distinct." M.P.E.P. § 806. This position of making the restriction final by the Patent Office may be relied upon by the applicants during examination of this and continuing applications, unless the restriction requirement is

withdrawn. If the examiner is not taking this position, then it is submitted that the restriction requirement as to these claims should be withdrawn and the above amendment should be entered.

The Applicants do not intend by these or any other amendments to abandon the subject matter of any claim as originally presented, and reserve the right to pursue such subject matter in other applications, such as continuing applications and divisional applications.

CONCLUSION

It is submitted that the claims are now of proper form and scope for allowance. An early and favorable action on the merits is respectfully requested. Should the examiner wish to discuss the foregoing, or any matter of form in an effort to advance this application toward allowance, the examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted.

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